

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office

COMMITTEE ON BANKING, COMMERCE AND INSURANCE  
January 30, 2006  
LB 828, 864, 878

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, January 30, 2006, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 828, LB 864, and LB 878. Senators present: Mick Mines, Chairperson; Mike Flood; Jim Jensen; Joel Johnson; Chris Langemeier; and LeRoy Loudon. Senators absent: Pam Redfield, Vice Chairperson; Rich Pahls.

SENATOR MINES: Ladies and gentlemen, good afternoon. It's nice to have you in the...no, this is not the Education Committee so if you would like to move down the hall. Welcome to the Banking, Commerce and Insurance Committee. My name is Mick Mines. I'm the Chair of the committee and I represent the Eighteenth Legislative District. This hearing is your part of the process. We look forward to your input and your thoughts. Please help us make this meeting go a little bit easier. Remember to turn off your cell phones. Complete the sign-in sheet. You'll find one either over by the door or on the table in front of me. Be staged in the on-deck chair so we can move the hearings right along. And any written materials that you'd like to submit, we need ten copies and you can hand those to our page. Let's see, we'll let the introducing senator make the initial statements and closing statements are reserved for the introducing senator. Let me introduce the members of the committee with us today and you will find that several senators will be moving in and out of the hearing. No disrespect intended, this is the time when other bills are introduced and they are busy. We will have two senators, maybe not even with us, Senators Redfield and Pahls. They are in the Education Committee hearing. Introduce the senators with us, on your left, Senator Jensen from Omaha. On your right, Senator Chris Langemeier from Schuyler, Senator Mike Flood from Norfolk, and Senator LeRoy Loudon, Ellsworth. Committee counsel on my right is Bill Marienau and committee clerk Jan Foster on my left. Our page today is Joe DiCostanzo from Columbus, Nebraska. The committee will take up the bills in the order listed and we will begin today with...what is the first bill listed? There it is, LB 828, primary introducer, Senator Lowen Kruse. Good afternoon, Senator.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 2

LB 828

SENATOR KRUSE: (Exhibits 1, 2) Thank you, Senator. Good afternoon to you, Senator Mines and to committee members and counsel. My name, for the record, is Lowen Kruse. The hard part of that is L-o-w-e-n and I represent District 13. And I was a little disappointed, Mr. Chairman. I thought there's a crowd of people out there that were coming to hear my bill (laughter), but it looks like there might be some change in that. I put down the date instead of the number on that so (laughter), but the counsel (sic: committee) clerk will figure that out. All right, get very serious, I bring LB 828 which is a return with a bill that was similar to last year and so I will not spend a lot of time with it. You're acquainted with the subject. Last year there was confusion about the intent of the bill and about the cost and so will bring it back. In order to further discussion, I think it's an important area. You all said it was important last year, but we were a ways off of finding some way to make it work. So, the intent is to shift some of the cost of highway crash which involves auto insurance, to shift some of the cost to the offender which is now carried by the innocent party, and by health insurance, and by hospitals, and by whoever can pick up the bill. Just before coming, I didn't bring a copy with me, but a constituent points out that they have huge costs. He has been unemployed since the crash and what is he supposed to do to be able to survive? And so, this won't do a lot on it, but at any rate, it's the point of covering that shift of cost. The other point of confusion was about the cost and we had things all over the board. We stand by our original statement that the cost on a typical premium notice would be about \$20 per car, could possibly get to \$40 but \$20 is the main cost I've gotten. And following our hearing a year ago, my insurance agent kind of lectured me for not having him down here. I haven't invited anyone to come today. I just want to (laugh) renew the conversation. Obviously, those persons under high risk would be paying more than that, but I would simply say that they are high risk for a reason. Again, most drivers will have no increase. You'll note on the fiscal note that the University of Nebraska and department, DAS, says they would have no increase because they already cover more than the minimum and my agent says, that's in north Omaha, that nine out of ten drivers are above the minimum. There is a fiscal note in there that it's possible, and they're talking about a one case per year

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 3

LB 828

of a situation of an uninsured or underinsured that "might" cost them, again, quotes around might, might cost them \$25,000 if that were to happen. Again, it's a very low increase. You are welcome to change the figures in there. We changed it a bit to make it a little different in that we're really looking at health care costs and so, instead of \$50, \$150, we dropped the property down to \$40. That would cover most vehicles, but it certainly wouldn't cover all of them. And, again, I emphasize that this is to cover a cost shift from health insurance, hospitals, and victims who have property loss. And I'm passing out for your look, a letter from Roger Keetle from the (Nebraska) Hospital Association. He asked to be represented here today and was doing so until they got a conflicting bill that came up just at this same time. But, again, the (Nebraska) Hospital Association says we get quite a few bills that we have to eat, that would get a bit of benefit from the hundred instead of the fifty. With that, I close my comments, Mr. Chairman.

SENATOR MINES: Thank you, Senator. Let the record reflect we've received a letter from the Nebraska Hospital Association, and that will be made part of our record. And I would also like to point out that Senator Joel Johnson from Kearney has joined us. Do we have questions for Senator Kruse? Senator Langemeier.

SENATOR LANGEMEIER: Thank you, Mr. Chair. Senator Kruse, we are provided information here. Insurance Information Institute which has all 50 states and what they currently have for requirements. Currently, in my rough going through, there's only three states with higher than us. Everyone else is equal or below us. Do you know, have you researched what's the trend out there across other states? Are other states talking about this?

SENATOR KRUSE: There is some talking about it. It obviously is not front burner for anybody including for us. Everyone acknowledges as a problem and it's way behind, as I recall from my testimony a year ago, I think it's 25 years since we've done anything about it. It does not cover in any even modest way the costs that would have...my son would have eaten up that \$25,000 the first night that he was in the hospital. And if it weren't for his uninsured, which I would hope everybody carries including all of us sitting here, he would have been and I would have been in deep

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 4

LB 828

trouble. But they're talking about it...I guess my response, not trying to be humorous about it, Senator, but I think we should take the lead and see if they can move up on it.

SENATOR LANGEMEIER: That's kind of where I figured you would end up.

SENATOR KRUSE: Yeah.

SENATOR LANGEMEIER: Thank you.

SENATOR KRUSE: We've not...but we've not had much discussion. Everybody that we talk with says oh, that's a great idea but they haven't stirred to do it.

SENATOR LANGEMEIER: Thank you.

SENATOR MINES: Senator Louden, did you have a question?

SENATOR LOUDEN: Yes. Thank you, Senator Mines. Well, I think you alluded to some of it, Senator Kruse, when you said your uninsured motorist...by raising this then does that automatically raise your uninsured motorist liability on your car insurance or how does that work when you have uninsured motorist on your?

SENATOR KRUSE: Well, uninsured and underinsured, I think, and some of you would know better than I, is related to your own maximum coverage so that it brings up the coverage on the person who might hit you to the coverage that you're carrying on yourself. It is a very low-cost addition and, again, I would affirm (laugh) everybody should do it. That was one of the first things we did after Doug's injury. We rechecked and found out that we could raise it on a couple of instances.

SENATOR LOUDEN: I don't remember last year, I'm looking through here. Was there any testimony against this last year?

SENATOR KRUSE: No, I recall as neutral testimony from somebody that said it would be several hundred dollars. And I think that kind of threw all of us and, again, we tried to confirm that because we had our figures confirmed ahead of



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 5

LB 828

time. And it's just not that expensive.

SENATOR LOUDEN: Well, yeah, and then I agree with you. Insurance agent, I think, most...what percentage did you say already has it?

SENATOR KRUSE: He said nine out of ten did it. This obviously was his estimate.

SENATOR LOUDEN: Well, and he's probably close to correct. Thank you, Senator Kruse.

SENATOR KRUSE: Yes.

SENATOR MINES: Senator Flood.

SENATOR FLOOD: Thank you, Chairman Mines. Senator Kruse, thank you for bringing the bill. I have had an opportunity to look at some of the numbers and view it a little differently than I did this summer during the interim hearing. But my question is, are we concerned about the under- or the uninsured in this bill? And it would seem that this really tackles the underinsured, LB 828. Would you agree with that?

SENATOR KRUSE: I would agree with that.

SENATOR FLOOD: And I was thinking, isn't there or could there be a way that we would require the insurance company upon an insured's request to drop their insurance, require the provider to notify the county, what is it, treasurer or clerk so that...and the reason I ask that question is, it seems to me a lot of people go out and get insurance coverage for 30 days and then they drop it, and then they're out driving around and there's no way law enforcement knows until it's time for them to reregister, as I recall. So, that would seem to me to be a step that we could go after those folks that try that. What's your reaction to that?

SENATOR KRUSE: Thank you, Senator. I'm smiling because you touch a subject warm to my heart and, frankly, with far more significance than just changing the minimums. We have been in a serious debate with the Department of Insurance on this for two or three years and some of the companies, and first they said they just couldn't tell who didn't have (laugh)

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 6

LB 828

insurance. So we kind of, thinking to be humorous, said maybe some of the insurance companies should get a computer that might tell us that. Well,...or tell them that. Then it was a problem of communicating between the insurance company's computer and the department. And I have been told that they now have that kind of communication set up so that they can feed in. That was the gap, knowing who. So that when an officer out at the roadside looks up something or a clerk in a court office, you know, is trying to figure out what that person's status is, they can determine that their license is no longer valid because their insurance has expired, suspended after a 30-day thing. But it is a gap.

SENATOR FLOOD: So if we...if we...I don't know that we could amend it in this bill. Maybe we could, maybe we couldn't, but would that be important to you that we address that issue with the uninsured?

SENATOR KRUSE: It's very important and I think if...and something we would all agree on, if we can press the department and the insurance industry to make sure this happens, we could tighten up on some of those that are just trying to skate by.

SENATOR FLOOD: Thank you very much.

SENATOR MINES: Any other questions? Senator Johnson.

SENATOR JOHNSON: Well, I guess with sitting here comes to mind is that there is a bill for electronic medical record for keeping track of vaccinations and so on. And it would seem to me that this is the type of place where that kind of system would show up as well and so that when the patrolman drives up behind you and punches in this driver's license, why, the information is...or the license on that automobile, that then there would be this information. If this person is driving, it's his vehicle. It's not insured. It seems to me it should be down the road pretty close if the technology isn't there now.

SENATOR KRUSE: It would certainly seem doable and on just routine checks at stop points, it ought to be used.

SENATOR MINES: Any other questions for the senator? Just perhaps a point of clarification. Your bill does increase

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 7

LB 828

the rate from \$25,000 to \$50,000 for both uninsured and underinsured so both of them are moving up...

SENATOR KRUSE: Correct.

SENATOR MINES: ...and just wanted to make that point.

SENATOR KRUSE: Yeah. Thank you.

SENATOR MINES: Any other thoughts? Thank you, Senator Louden...Kruse. I called you Senator Louden.

SENATOR KRUSE: Oh, that's all right.

SENATOR MINES: I don't know why I'm having trouble with your name, Senator.

SENATOR KRUSE: I'll claim that (laughter).

SENATOR MINES: I misspoke last time.

SENATOR KRUSE: I was mistaken for Bob Kremer here recently so I'm also declared to be good-looking (laughter).

SENATOR MINES: (Laugh) Could I see a show of hands of those that are in favor or support of the bill? I see one, two. Those that are here to testify in opposition? I see one, two. And those that are here to testify neutral? I see none. Proponents, please come forward. Joe, nice to have you with us.

JOE ELLIOTT: Mr. Chairman, members of the banking and insurance committee, my name is Joe Elliott, E-l-l-i-o-t-t. I represent the Professional Insurance Agents Association, of which we have about 400 members throughout the state of Nebraska. Most of our independent agents sell high limits. I mean, that is their primary purpose, not necessarily to get the big premium but to adequately protect the people. So, I know in our office in Omaha, we sell 100/300 is the minimum limits. And we sell UIM and UM somewhere between \$300,000 and \$500,000. I had a case of a fellow friend, doctor, who had insurance with a direct writer type of carrier rather than an agent, and he had 25/50 limits, no umbrella. And he was paying \$980 a year for that coverage. And I said, gees, I know we could do a lot better than that

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 8

LB 828

and besides that, with your exposure you need a lot more because the minute you have an accident and you got \$25,000 limits, the first thing you're going to get from that insurance company is a letter, if you're being sued, you're going to get a letter saying you better get an independent attorney of your own, and you're going to pay \$150-\$200 an hour for that attorney. I think that was a factor that convinced him of it. We did the quote. We quoted him 100/300 thousand limits, and then we put a million dollar umbrella on top of that so he's got a million 300,000 limits. And we also kicked the UIM all the way up to 300,000 and we left the collision, comprehensive alone. But he did pay something like \$780 for that same coverage. He saved \$200. And the reason he did probably is the fact that he had a good credit score and the company that we use believed in using credit scores. The other company did not and so he got a big jump, as much as 25 percent discount because he had a good credit score. But that's what happens in some of these situations that behooves the independent agent to make sure they get higher limits and that's true outstate as well. I know in your home area up there, we have a good agent that he contingently has been selling the high limits and been doing it successfully. Our rates right now in the state of Nebraska for automobile are right in the \$540 average premium rate. That puts us about seventh or eighth. For many years, I would say ten years ago, we were in the top two or three. South Dakota is always ahead of us. Iowa is close. Wyoming is close and so is Kansas. So we've been in that same general area so we're really, certainly not out of line at all, but we are seeing some escalation. Another point I wanted to make is that we feel that the higher limits, even though there's three states now that have it, the state of South Dakota considered it a year ago and didn't go along with it. They projected the rate increase about 15 to 18 percent for that, but that rate varies all over the lot, depending upon credit scoring and other credits that you can get. But the state of Oklahoma also had a bill in and they did not pass that bill. But it was heavily discussed and I think it got to the floor. So we're not saying that this is the answer but certainly when these people are paying that kind of...for that kind of high limits, they're paying for a lot of, somebody else's insurance, there's no doubt about it. But they have been willing to take on that risk and then we've been able to sell it to them and convince them that's important to them.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 9

LB 828

So with that, I'll stop.

SENATOR MINES: Thank you, Joe. Questions for Mr. Elliott? Joe, how would you respond to the notion that increasing the limits will also increase the number of uninsured?

JOE ELLIOTT: Well, we have somewhere between 5 and 10 percent. I've testified at a lot of these hearings and I...nobody knows the answer to that. We've got a lot of drivers at Offutt Air Force Base that are insured with companies that are not even licensed in the state. They don't have to be. They're not even licensed and we don't know how many of those are. We assume that the base requirements would insist that they be there. But I think that this number is not going to change dramatically if you went to 25/50. I've heard estimates as high as...and it's going to go up to 10-12 percent. Another question that came up is on this data system that we have to determine whether or not we've got uninsured motorists out there, and that is not finalized yet. They're still trying to get the companies, organizations, to be able to submit the right information to that state because we don't want our insureds to go out there and find out that we had a VIN number that one digit out of what, 22 or 23 was transposed and all of a sudden he's stopped and he doesn't have a...his records shows that he does not have insurance. This is going to be very embarrassing, but I really don't think it's going to affect it that much, certainly could do it 5-10 percent at least initially.

SENATOR MINES: Thank you. Thanks for your testimony. I'm sorry, Senator Johnson.

SENATOR JOHNSON: Well, Joe, you kind of got me thinking about...somebody told me something awhile back. Maybe you know the answer. And they said that one of the problems that's increasing in Nebraska, particularly since the 9/11 stuff is that the foreign driver's license makes it so that people for one reason or another don't get the insurance, don't qualify for it or whatever and that this is becoming an increasing problem with this group of people. Do you know more about it than I do?

JOE ELLIOTT: Really, I don't know too much. We haven't been exposed to it. None of our agents write that type of

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 10

LB 828

coverage that I am aware of. There's some in Omaha, I know, that do, even those without a driver's license. I'm not sure how they can track it down or how they can properly rate it or find out the number of violations they have. But, yes, I think that is going to be a particular problem and in your area, as well, where you do have a lot of people moving in from out of town. And I don't know how it's going to play out because we've heard stories that there are going to be drivers' licenses. We've heard that there might be certificates for some of these people, and I don't know how the insurance companies are going to rate some of those things. I thought that issue would come up this year but, apparently, there's no bill in this year so we don't know how it's going to play out.

SENATOR JOHNSON: Well, somehow in your discussion it made me think of it.

JOE ELLIOTT: Yeah, but that's going to be an upcoming problem, no doubt about it.

SENATOR MINES: Thank you. Joe, thanks for your testimony. Next testifier supporting the legislation. Good afternoon.

MATT LATHROP: Good afternoon. Mr. Chairman and members of the committee, my name is Matt Lathrop, L-a-t-h-r-o-p. I am an attorney with Hauptman, O'Brien, Wolf and Lathrop in Omaha, Nebraska. I'm here today on behalf, representing the Nebraska Association of Trial Attorneys and hope that with my experience in handling a majority of my caseload being automobile collision cases, I can maybe answer some questions that you might have about the practical effects of this. I'm engaged in the private practice of law and a significant part of my practice is dealing with automobile collision cases. Twenty-three years ago in 1983, Nebraska law was changed to require the minimum liability limits to increase to \$25,000 per injured person; \$50,000 per car. Since then, the Consumer Price Index for all items, all urban consumers, U.S. city average, has increased almost 97 percent since July of '83; 97 percent increased in the Consumer Price Index has occurred, and there has been no increase in the limits of insurance. Cost increases in the medical profession have been even greater over that time. For example, costs in the general category of medical care and the Consumer Price Index have increased 226 percent

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 11

LB 828

since 1983. Medical care service costs in the same CPI have increased over 240 percent. New vehicles have increased by about 38 percent in the last 23 years. What does this mean to the Nebraska citizen whom these laws and to whom those limits were designed to protect? It means that increasing amounts of the negligent drivers insurance limits are going to pay out-of-pocket costs of these costs and collisions, medical care, vehicle repair, and vehicle replacement are the primary places this is going rather than to compensate people for the physical injuries they suffer. Decreasing amounts are available for an injured person's general damages, physical pain, mental suffering, scarring, disfigurement, and dismemberment. General damages include compensation for temporary and permanent injuries to a person's body. In the course of my practice, I'm increasingly dealing with my injured clients' own insurance companies seeking to recover an underinsured and underinsured coverages purchased by my client. Because the responsible party simply does not have enough insurance coverage, even though the responsible driver had the required statutory minimums. It seems like there has been a gradual shift of the legal and financial responsibility over the years for the negligent driver to the injured person, and that injured person's own insurance coverages. I believe that many Nebraskans are mistaken about two fundamental facts of their motor vehicle insurance. First, many who carry only the statutory minimum coverages believe they have something called full coverage. There is no such thing. Second, many Nebraskans believe that their personal financial exposure due to their negligence in causing motor vehicle collisions is limited to the amount of the insurance they carry. There are huge responsibilities that go with operating a vehicle in this state as there should be. Many fail to understand that their personal net worth may be on the line every time they get behind the wheel of a vehicle. With today's rising medical costs and with new vehicles now costing more than many of us in this room paid for our first house, it simply does not take much today in terms of injuries or damages to exceed the outdated statutory minimums. When that happens, a negligent driver's personal assets are exposed to pay for damages which can be a big surprise if that person believes their insurance coverage gave them complete or full coverage. I did want to address a couple of the questions I heard earlier, if I may, because perhaps I can shed some light on those things. Senator

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 12

LB 828

Kruse was asked if changing the statutory minimums on liability would change underinsured coverage responsibilities. And my expectation from reading the bill and in my practice that would not because those are independently priced and offered items in insurance so having underinsured of one amount would not affect...or I'm sorry, liability of one amount would not affect your responsibilities to even have un- or underinsured. There was another question about some people applying for insurance for a 30-day period, getting the certificate going, getting the license plates for the vehicle and then dropping it. I deal with many people in my practice. I deal with, frankly, a far larger percentage of people in my practice who are injured and the responsible party has the minimum coverage but not enough. As opposed to dealing with people in my practice who have been in a car accident with somebody who doesn't have insurance. It just is more often in my practice, I deal with underinsured claims rather than uninsured claims. The second thing in response to that question is that, I think if we raise the minimum limits, I don't think we're going to...or I'm sorry, if we change the reporting process, I don't think we're going to solve the problem of not enough insurance coverage because one of the concerns was well, if we just have the Secretary of State or some treasurer report that the insurance was dropped to the Department of Motor Vehicles, that person's license will be suspended. We've already got people driving without insurance. I don't think getting a letter from the Department of Motor Vehicles that my license is suspended is going to change my scofflaw attitude. So I don't think that reporting system will address the lack of insurance problem that this bill is. And the last thing was a question of Senator Johnson's for foreign drivers. We have a very large practice in Omaha with automobile claims, and I have not run into any kind of a noticeable problem with foreign drivers in insurance coverages. But other than that, I guess I'd make myself available for questions if there are any.

SENATOR MINES: All right, thank you, Matt. Questions for Mr. Lathrop? Matt, just a second. Can you help me with...you suggested that underinsured that you represent, many of those that have trouble collecting from their own coverage or under their own coverage. Is that...did I hear you right?



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 13

LB 828

MATT LATHROP: I may have not spoke well. One of the concerns was that there are too many drivers out there who don't have any insurance, and if we raise the amount of the premium, won't that increase the number of people who don't have insurance? And I was responding to that by saying, in my practice I deal with more people who recover a small amount from the liable or responsible party and then I'm dealing with their own underinsured coverage.

SENATOR MINES: Okay.

MATT LATHROP: I don't have a lot of uninsured motorist coverage claims.

SENATOR MINES: But the underinsured coverage, are you having difficulty with the insurance company recovering that?

MATT LATHROP: I am not.

SENATOR MINES: Okay.

MATT LATHROP: No, well, I mean...

SENATOR MINES: Okay.

MATT LATHROP: ...there's always a difference of opinion as to what a claim is worth, obviously, so in that respect, you know, I have to work for my money but...

SENATOR MINES: Yeah.

MATT LATHROP: ...no, the insurance companies are...

SENATOR MINES: Okay.

MATT LATHROP: ...they don't differentiate between how they treat someone between a liability or an uninsured claim.

SENATOR MINES: Great.

MATT LATHROP: Okay.

SENATOR MINES: Any further questions? Thanks, Matt. Nice job.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 14

LB 828

MATT LATHROP: You bet. Thank you very much.

SENATOR MINES: Any other proponents? I see none.  
Opponents, come on forward. Coleen.

COLEEN NIELSEN: (Exhibit 3) Good afternoon. My name is Coleen Nielsen. that's spelled C-o-l-e-e-n N-i-e-l-s-e-n. And I'm here today representing the Nebraska Insurance Information Service and the Property Casualty Insurance Association of America in opposition to LB 828. And, as you've heard, and we've heard a lot of testimony about this bill, there was a similar bill last year as well as an interim study this summer, and the concern of the insurance industry is that if you do raise the financial responsibility limits, you're going to see a drop-off at the lower levels, of people who cannot afford insurance will choose not to purchase it any longer. And you've heard that, oh, it's not that much difference in premium and you've heard a figure of about \$10 to \$20 difference in premium. And I have to say, that in certain instances, that is true, but mostly in a perfect world where you have a middle-aged person who doesn't have any accidents and the premium difference may be \$10 to \$20. But the group that it affects are the high-risk drivers, the people that you want to be covered by insurance and so I have a couple of examples here that shows how the differences could really make a difference and to whether or not somebody would want to purchase insurance. And the first is, a single male, 21, and I have copies here for the senators. A single male, 21 years old, with one at-fault accident, one not-at-fault accident, and one speeding ticket, and the difference in his premium would be \$183.42. A second example that I have is a family of four with clean records, no accidents, but with one male child, age 18, and one female child, age 16, so they have multiple cars and the difference would be another \$106 per year. Now, you know, we can play numbers games all we want, but the bottom line is is that if you're going to mandate these kinds of coverages, it would seem to make sense that you have a product out there that at least 26 other states have, that might at least be affordable for some and not risk people just not purchasing insurance. So I think, Senator Flood, you made the point that there were only three other states...I think there's only two other states that actually have 50/100 limits and that is Alaska

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 15

LB 828

and Maine, and there are two other states that have, I think, 30/60 limits. So Nebraska would be the highest by having a 50/100/40 thousand dollar limit. So, I'd be happy to answer any questions.

SENATOR MINES: Thanks, Coleen. Questions? Senator Johnson.

SENATOR JOHNSON: I'm just full of questions today.

SENATOR MINES: That's great.

SENATOR JOHNSON: The...and I don't know if this one applies here either, but I remember seeing some statistics once that if there's an automobile accident in Nebraska, there is only in the neighborhood of 40 to 45 percent of the time that there is an injury reported with that accident. In California, I've heard that if there is an automobile accident over 90 percent of the time, there is a report of an injury in the accident. Does this play any part in these numbers that we're talking about insurance? In other words, I guess what I'm wondering is, are we going to see the trend going from Nebraska to California type of reporting?

COLEEN NIELSEN: Well, I think that what you might be referring to is that there's a target out there in terms of settlements, in terms of personal injury or bodily injury settlements. It may be true that if you have limits, policy limits, of \$100,000 then the trend might be that you start settling for those limits. So, that in and of itself could increase the cost of insurance. And by doing this, you're going to increase it some for everyone. And I'm sorry, but I would like to address the question, Senator Flood, that you had with regard to reporting. Insurance companies are often asked that why can't you report that the policy is cancelled, and then we could start tracking these uninsured motorists? And that would be good if we could do that, but the reason that we don't have that information is because we have no clue as to why people cancel their insurance. We don't know whether they've moved to another company. We don't ask them that. And that even if you have...and there is a database right now that's been collected for on-line registration. But even then, you have a gap between the time that that information is processed through the system and a person having actually purchased insurance. So in

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 16

LB 828

other states they've had tried to use that for law enforcement purposes and have found that many people have been ticketed that actually do have insurance.

SENATOR MINES: Senator Flood.

SENATOR FLOOD: Thank you, Senator Mines. I appreciate you bringing that up. I guess my question is, you know, if we run everything through the Department of Motor Vehicles and you did cancel your insurance and then we had a database that collected the information by driver...

COLEEN NIELSEN: Um-hum.

SENATOR FLOOD: ...or by...I don't know how you do it, driver...it would probably be by vehicle, usually you're insuring a particular vehicle, not necessarily a particular driver with the registration certificate. Couldn't you require the driver, just send out a notice for a show cause hearing in Lincoln and the show cause hearing would say you are required to show cause as to why you cancelled your insurance. And to make that show cause hearing request go away or evaporate, you simply send them in a copy of your insurance as updated and it can be verified through the database. It's not the impossible task, is it?

COLEEN NIELSEN: So then you're asking...right, you're...well, you're asking that every person who wants to cancel their insurance and move from one insurance company to another would have to show cause why they're doing that?

SENATOR FLOOD: Or mail it in in an appropriate time, you know. If I cancel my insurance with Company A and I'm going to go to Company B, I've already talked to Company B, it takes over right away. And I've got 30 days to send the Department of Motor Vehicles my information so that they are aware of that.

COLEEN NIELSEN: I'm thinking that most people wouldn't want to have to report to the government why they're switching insurance companies or when they do. That would be my only...

SENATOR FLOOD: That's speculation on your part?

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 17

LB 828

COLEEN NIELSEN: That is speculation, but I'm.

SENATOR FLOOD: The record will so reflect (laughter).

SENATOR MINES: Coleen, tell me again who you're here representing, the Nebraska Information...

COLEEN NIELSEN: Okay, the Nebraska Insurance Information Service...

SENATOR MINES: Okay.

COLEEN NIELSEN: ...and the Property Casualty Insurance Association of America.

SENATOR MINES: All one word?

COLEEN NIELSEN: Corby Gilbertson represents them...

SENATOR MINES: Got it.

COLEEN NIELSEN: ...and she's in the Workers' Comp hearing today.

SENATOR MINES: Got it, thank you.

COLEEN NIELSEN: Thank you.

SENATOR MINES: Thanks for your testimony.

COLEEN NIELSEN: Um-hum.

SENATOR MINES: Next opponent...I'm sorry, Senator Louden has a question.

SENATOR LOUDEN: Yeah, I need some help here, I guess, Coleen.

COLEEN NIELSEN: Sure.

SENATOR LOUDEN: On your bodily injury now, you notice where it goes...you wrote down here that what, \$151.78 it would raise?

COLEEN NIELSEN: Right.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 18

LB 828

SENATOR LOUDEN: I think, in your testimony?

COLEEN NIELSEN: Yes.

SENATOR LOUDEN: But yet when you go from the 50 to 100, but then when you go to the next 100 and 100, it only raises \$47. Why is that? Why is there that big jump there right off the bat? I realize there's probably a little difference in money, but when you're starting to get into the big bucks, it doesn't seem like it makes much difference. Can you give me any reasoning for that?

COLEEN NIELSEN: No, sir, I can't. I'm not an actuary and I don't know why, but I can try to get that information for you. But I don't know.

SENATOR LOUDEN: Well, I'm just wondering if we're sticking this 151 bucks on the kids, you know, if this is correct, or if there should be another layer in there or what the problem is 'cause it looks like once you get past that hump, then you don't...your insurance isn't near as high so. Anyway, thank you.

COLEEN NIELSEN: Um-hum, you're welcome.

SENATOR MINES: Thanks, again, Coleen. Next testifier. Ms. McKenzie?

JANIS MCKENZIE: Senator Mines, members of the committee, for the record my name is Jan McKenzie spelled M-c-K-e-n-z-i-e, here representing the Nebraska Insurance Federation in opposition to LB 828 with basically a me too. Just in general, to address a couple of the intermingled issues that came up in the discussion. Uninsured motorists...uninsured motorists and how much insurance a person should cover all become kind of intertwined in this discussion on various bills. We've been talking for years about uninsured motorists in Nebraska. Who are these people? Why can't we find them? Why does it seem that everyone who's in an accident managed to get hit by an uninsured motorist? And yet we are, in fact, one of the states with the lowest percentage of our population uninsured. And the question always is, who are these people and why do they do this? And in many cases, they are people

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 19

LB 828

who are either irresponsible, or unable to afford, or to acquire a valid license anymore. Now, how do we get those people to behave responsibly and how do we get them to do the things that most other good citizens do? In regard to this issue, we've heard that many, many people...I'm included, and I'm sure most of you are as well, carry much more than the minimum requirements because we see that as protecting ourselves maybe against someone who isn't responsible enough to be concerned about themselves or other people that they might injure or affect. So getting to that issue of how we get people to be responsible and how much we should burden responsible people with things that we implement to try to get to those who won't be no matter what we do, is kind of the intermingled question in the uninsured motorists as well as how much should we require people to carry and that underlying fact that we bring up often on these issues as to how do we do something to make it better without making it worse? If we raise the limits, do we, in fact, throw even 2 percent more people in the uninsured pool? Those who are trying to be responsible, but struggle to even make the payments that they're making now for minimum insurance. With that, I'd answer any questions from the committee except Senator Flood because I am not an attorney (laughter). Thank you, sir (laughter).

SENATOR MINES: Thank you for your testimony. The Chair recognizes Senator Flood (laughter).

JANIS MCKENZIE: We're not having as much fun as Education Committee, I'm sure, so (laugh).

SENATOR MINES: Are there any questions for Ms. McKenzie? Seeing none, thanks for your testimony.

JANIS MCKENZIE: (Laugh) Thank you.

SENATOR MINES: Anyone else...

SENATOR JOHNSON: You woke us up anyhow.

SENATOR MINES: ...anyone else wishing to testify in an opponent position or a neutral position? I see none. And that will conclude the hearing on LB 828.

SENATOR KRUSE: I'll stand...

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 20

LB 828

SENATOR MINES: Except, let me back up.

SENATOR KRUSE: ...except. I tried to get you before you put a period on it.

SENATOR MINES: Pardon me, Senator Kruse. Pardon me.

SENATOR KRUSE: That's all right. A few quick comments, Mr. Chairman and committee. I appreciate this discussion. I certainly appreciate those coming to testify because that's what we've been asking for for a little broader perspective. First, to comment on full coverage and those comments that other states are not higher than this. Our son was carrying full coverage which was required by that state. He's from another state. So there is such a thing. His medical bills are now at \$2 million and go up about \$50,000 a year, and they pay 100 percent of that. So there is such a thing and that (laugh) kind of puts this other thing back someplace. In terms of no insurance, LaMont tells me that the problem, and he's been discussing it with both sides of it there. One of the problems is that the insurance companies don't turn that data in often enough to make it go. But in terms of getting stopped out on the highway and you might get a ticket for not having insurance, but you'd certainly have a ready defense for that and it would be cared for so I don't see it as a great problem. The dollars for high risk, I think, frankly, are appropriate. A person's at high risk, that person should be carrying it and we've discovered in discussing with various people that low-income family is the one that really needs to be covered on this kind of thing. A four-car family, as one illustration gave, with all due respect, a family with four cars, and maybe even a house and some other things has no business with this low a coverage. It would be very foolish and the first one to testify identified how or why that would be. And finally, how do we do this? That's the important thing. I think we ought to stick with the consensus that everybody ought to have insurance and, frankly, we kind of are qualifying it or ducking out and saying, well, everybody ought to have this much insurance except for those people who are high risk or somebody else. That's the wrong message. We just need to be very clear about it and I think we have been clear in Nebraska, and that's why we've got a pretty good record of it. We need to



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 21

LB 828, 864

keep on the enforcement and make sure people have insurance, and I don't think the dollars are really the question. Thank you.

SENATOR MINES: Thank you, Senator Kruse. Questions? I appreciate it. I'm sorry for almost closing you out (laughter), I apologize for that.

SENATOR KRUSE: Thank you. Well, you didn't get away with it. Thank you very much.

SENATOR MINES: Now the public hearing on LB 828 is concluded and I will open the public hearing on LB 864. Senator Howard, welcome to the civility and sanity of the Banking, Commerce and Insurance Committee.

LB 864

SENATOR HOWARD: (Laugh) Thank you. I'm wondering where all of your cameras are.

SENATOR MINES: How is it over in Education?

SENATOR HOWARD: There are cameras on every side.

SENATOR JOHNSON: You're welcome to stay as long as you want (laughter).

SENATOR HOWARD: (Exhibit 1) Oh, thank you (laughter). I can't tell you how much that means. Thank you, thank you. Good afternoon, Chairman Mines and members of the Banking and Commerce (sic: Banking, Commerce) and Insurance Committee. My name is Senator Gwen Howard and I represent District 9. I'm pleased to have this opportunity to introduce LB 864 to you. This bill will protect women and their unborn children from insurance discrimination. The bill prevents any group or individual insurer from denying coverage of pregnancy under preexisting conditions clause of their plans. While currently, federal law defines group insurance maternity coverage, this bill specifically includes self-funded employee benefit plans and individual insurer. LB 864 is the right thing to do. It insures that individuals who pay health coverage premiums receive the health coverage they pay for. It eliminates gender

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 22

LB 864

discriminatory insurance policies that only apply to women. Insurance companies who accept premiums certainly don't make refunds to individuals who have paid years of premiums without filing claims so it seems an unfair practice to allow insurers to stipulate that individuals should be required to accumulate a certain amount of premium payments in order to utilize the benefits they are paying for. Each year the Medicaid system assumes the cost of coverage of prenatal and delivery care for women who cannot afford insurance for themselves and for their unborn children. By disallowing maternity coverage for women who have already insured, we force more individuals to turn to the already overwhelmed Medicaid system and ultimately the taxpayers to cover these expenses. The estimated cost of maternity-related health care is around \$7,000, and that's if there are no complications. A state and the nation struggle to address the ever-increasing costs for health coverage for those who are uninsured. It just seems reasonable to allow people who are paying for health insurance to be covered for maternity-related expenses. LB 684 is not a large deviation from existing statutes. It simply closes gaps that may allow some insurers to deny coverage where others are prohibited from doing so under law. I urge your favorable consideration of LB 684. Thank you.

SENATOR MINES: Thank you, Senator Howard. Questions?  
Senator Flood.

SENATOR FLOOD: Thank you, Chairman Mines, Senator Howard, thank you for bringing this bill. I can only imagine you're going to be very popular among many circles in the state because this is an issue that young families deal with. My question is this. You know, insurance is essentially an experience in contract law and insurance is a business. How do we justify signing a business up in the state for a loss? Let's say a pregnant woman, finds out she's pregnant, doesn't have insurance. It's inevitable, at some point, there's going to be a procedure. Hopefully, the baby is born healthy. She pays \$2,400 in premiums and the hospital bill is 6,000 bucks. How are we being fair to a for-profit business in an insurance company?

SENATOR HOWARD: I think that's always the question that we deal with when it comes to, especially, insurance. And what

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 23

LB 864

I'm looking at is the gap that we've got between the federally mandated policies which came in probably three years ago under the HIPAA rule and the private insurance or the self-funded employee benefit plans that kind of ride under the radar of that. And I want to see that gap closed so that there's more of an equitable coverage for moms and babies.

SENATOR FLOOD: What about testicular cancer? I know I've got it. I don't have insurance. It's a disease that obviously only affects men and after I get my diagnosis I go right out and get a policy. I know that testicular cancer and birth are two different things, but do we open the door wide open with this kind of legislation? And I ask that with all due respect because I think that what you proposed here is going to be very popular statewide.

SENATOR HOWARD: Well, and I appreciate your question. I would really defer to your judgment on that since it's really more of a legality of what do we open the door to, and I know that you're very knowledgeable of that. I'm saying, in this particular instance with this particular circumstance, I think the coverage should be fair and equitable, and people that pay in for coverage should be entitled to have that insurance.

SENATOR FLOOD: Thank you very much.

SENATOR HOWARD: Thank you.

SENATOR MINES: Thank you. Any other questions for Senator Howard? Senator Johnson.

SENATOR HOWARD: Senator Johnson.

SENATOR JOHNSON: I'm a little slow today. Maybe I had too big of a lunch. Can you give me an illustration of the type of thing that we're talking about?

SENATOR HOWARD: As I understand it, if you're a woman who is covered through your employment for maternity care and your insurance policy. But if you change, if you would go to another job and under the HIPAA ruling, this insurance would be required to continue. But if you're insured under a self-funded employee benefit plan, you're going to lose

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 24

LB 864

that coverage. And if something would happen down the road, not only do you have the cost of the maternity care, but also unexpected costs for any complications.

SENATOR JOHNSON: So the self-funded one, you'd have the insurance.

SENATOR HOWARD: You had paid for the insurance originally, but if you leave that employment and that funding, my understanding is the only way you could continue that is if you would pay the entire insurance cost for however long you would need to have that in effect, more of a COBRA. Okay.

SENATOR MINES: Thank you. Any other questions? Senator Louden.

SENATOR LOUDEN: Yes, Senator Howard. I guess it's been a few years since I've had to buy health insurance, of course (laugh). But anyway, when I was buying that stuff, as a family you could either buy your insurance as a family or you could buy it as a single male, a single female. How would this affect that if you bought your insurance single male and a single female because you get your premiums are lower at that time, but if you buy it as a family, then your premiums are up top?

SENATOR HOWARD: Well, that's a really good question and I know exactly what you're talking about because when my children were young, as a widow, I would take three-quarters coverage so that they were covered, I was covered, but, of course, I didn't have a spouse to provide coverage for. But if you didn't take out the insurance coverage for the maternity, if you were just a single individual then, obviously, you wouldn't be carrying the cost of that and you wouldn't expect to be able to benefit from that program.

SENATOR LOUDEN: Would this affect that then, this law?

SENATOR HOWARD: No.

SENATOR LOUDEN: Why not?

SENATOR HOWARD: Well, because you hadn't paid for it. The idea is if you paid for the insurance coverage...

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 25

LB 864

SENATOR LOUDEN: Yeah, but it isn't a preexisting condition.

SENATOR HOWARD: Well, that's very true, that's very true. But you wouldn't be able to expect to get coverage on something you hadn't provided coverage for.

SENATOR LOUDEN: Okay. Then I guess you lost me on what you're trying to do with the bill because that's what you're trying to do with it is get coverage on something that you haven't been paying for, aren't you?

SENATOR HOWARD: Maybe an example would be helpful and that's if you have this coverage, if you had family coverage, husband, wife, family coverage, children. And yet it was a private insurance; it was a self-funded insurance. You changed your association with that. You had paid into that. You were pregnant when you left, the individual was pregnant when they left, and yet they weren't able to have that coverage when they needed it.

SENATOR LOUDEN: Well, okay, I'm not clear. I understand what you're talking about, but I was under the impression that after you left, if you got fired or whatever and you left a corporation or something like that that insurance was still good for a certain length of time afterwards.

SENATOR HOWARD: Some insurance policies are and under the HIPAA act, it would continue to cover you. But if you were in a self-insured, you wouldn't have that benefit.

SENATOR LOUDEN: Okay, thank you.

SENATOR HOWARD: Oh, thank you, sir.

SENATOR MINES: Any other questions? Senator Jensen.

SENATOR JENSEN: Yes, thank you, Senator Mines. Senator Howard, however, if you had COBRA, that extends out 18 months, does it not?

SENATOR HOWARD: That's my understanding, yes.

SENATOR JENSEN: And a preexisting for certain pregnancy is nine months so...

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 26

LB 864

SENATOR HOWARD: Right, right.

SENATOR JENSEN: ...it would seem to me that if you switched jobs in there, that it'd be the same. Now, if you went out...

SENATOR HOWARD: But if you went to...

SENATOR JENSEN: ...if you hadn't been working and then went...

SENATOR HOWARD: ...but if you went to another insurance company that was paying for insurance coverage already, you wouldn't opt to take the COBRA coverage. You'd be into another plan.

SENATOR JENSEN: Unless you knew.

SENATOR HOWARD: Unless you wanted to have both (laugh). Unless you could afford to have both.

SENATOR MINES: Any other questions? Thank you, Senator Howard.

SENATOR HOWARD: Thank you for your time. I think I'll waive closing because I need to be back. Tami will...my aide, will stay here and anything that...

SENATOR MINES: Thank you.

SENATOR HOWARD: And I do have a handout to distribute.

SENATOR MINES: Yeah, please give it to the page.

SENATOR HOWARD: Thank you. Thank you for your hospitality (laugh).

SENATOR MINES: (Exhibit 2) Thank you. And I would like a show of hands of those in favor of the bill, please raise your hand? Those wishing to testify in opposition to the bill, I see two, three, four. And those testifying neutral? All right, we have no proponents so I will take opponents. Don't be shy. Opponents. And while Tom is making his way up, I would like for the record to reflect that the Nebraska Women's Health Advisory Council has sent us a letter in

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 27

LB 864

support of LB 864 and that will be admitted to the record.  
Mr. Jenkins.

TOM JENKINS: (Exhibit 3) Good afternoon. I'm Tom Jenkins, vice president and general counsel of Blue Cross/Blue Shield of Nebraska, here to speak and appreciate the chance to speak in opposition to (LB) 864. I'm going to speak mainly just to the health insurance aspect which is what I understand Senator Howard is addressing. I think there are some others here who wanted to make sure that even if committee found on the health insurance that certain other coverages such as disability income or long-term care insurance might be excluded. First of all, Senator Howard hasn't had the benefit of the very interesting lessons you folks have had over the years on the impact of the federal law called ERISA, Employers (Employee) Retirement Income Security Act. That's a 1974 act which preempts state laws applicable to employee benefit plans. That law, it does allow the state legislature still to have an impact on insurance companies. We're still a state-regulated industry, and we are subject to, on the insured plans to the laws that you make. But as for the self-insured groups, many of which we administer, they are by and large, preempted so you really cannot pass a law that will impact the self-insured plans which Senator Howard mentioned. The exception to that, generally, is with respect to state and local governments. They have the opportunity to opt out...they're not, first of all, impacted by ERISA so that preemption doesn't apply. On this particular subset of ERISA, the HIPAA laws, there is a provision in there that allows state and local governments to opt out of the portability requirements which is where the pre-ex sits so state and local governments could opt out. And I guess you could change that. You could take that right away from them. To my knowledge, and we have a lot of that business with state and local governments, the counties, the state itself, and the cities, I am not aware of any of those subdivisions or the state that has ever taken advantage of that right to opt out. So, I guess first off, I guess my point in response to the points that Senator Howard makes is, you really can't impact...cannot impact the self-insured groups as she mentioned with the exception of the government entities. And on the...let me break it up and I'm going to be just as brief as I can, but I might ask you to take a look at the statute that's already in law and I've

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 28

LB 864

highlighted...this is the state, it's article 69, Chapter 44, the insurance code. And you'll notice that it's already prohibited to treat pregnancy as a preexisting condition at all. So, I guess what I'm saying is in the group arena it's hard to see whether you talk about self-insured where you can't do anything or insured where you can do something, but you already have. It's hard to see what the point would be of this additional provision. Now, individual or nonemployer insurance is a different story. It is subject to very different laws of gravity, so to speak, on the rules of the concept of adverse selection. This is the risk that it's designed to prevent unfair burdens being placed on the people that do buy their insurance ahead of time by those who could come along at the last minute after they discover a condition, whatever it is, and want the coverage for that. There's the old saying in the casualty business, you can't insure a burning barn. And this is what you have if you have somebody that is looking for coverage for whatever condition, in this case, maternity after they learn they're pregnant, that's pretty much what you have. At that point, they don't need insurance; they need money. They need somebody to pay the bills and Senator Howard I think was pretty much right on on the cost of a delivery being in the \$7,000-\$8,000 neighborhood. And the premium for coverage is likely to be in the \$500 neighborhood. So, somebody would really be making a big mistake if they could buy an insurance coverage, let's say eighth or ninth month, get that \$7,000-\$8,000 bill paid and then cancel it. I mean, that would be an obvious invitation for that kind of mischief. Well, while I appreciated Senator Flood's questions about the impact on private businesses which the insurance companies are, it really is a fact that that money comes from other policyholders. It requires a good mix of people who don't have conditions to be paying in over long periods so that when those claims come along they can be paid. And so it's really a matter of stripping the coverage out from making the people who have contributed a long time buy the coverage, basically pay for the people who came along at the last minute. We sell coverages both that have maternity coverage and coverages that don't. It's a pretty significant difference in price, but both are available. One thing that is, you know, surprising to a lot of people, even the coverage with maternity, you can buy it after you become pregnant or during a pregnancy, but not for this pregnancy. It would be



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 29

LB 864

good for future pregnancies. If this bill were to pass, though, that would probably change and you probably would not...we would pretty much have to decline the coverage for somebody who's already pregnant to avoid this little math problem I just talked about. So, really just to wrap up with that, I think the consequences would be really severe. It would increase the cost of the coverage with maternity further than it already is versus the coverage without maternity. The most likely thing is, though, it would really reduce availability so that people who could otherwise get coverage would not be able to. And by the way, even without buying the coverage for the normal, what we call normal delivery, there is still good reason that person, if they can afford it, sure should think about that because it would cover complications of pregnancy, covers things that just excludes the maternity. It's going to cover them for things like, you know, an auto accident, things unrelated to the pregnancy, or serious complications that can arise from the pregnancy, and even the coverage without maternity coverage at all is going to give them a right of insurability, an option to cover who, the infant. So that really gets into some pretty serious money with the premature babies and that kind of thing. They can at least get coverage; that's already in Nebraska law. So, I mean, it's kind of off on a different topic, but the point is the policy is not valueless just because you make them wait until the maternity has occurred or until the delivery has occurred. It's still a valuable coverage even with that little carve-out worth about \$7,000 or \$8,000. So, that would be all the points I would have to make. I'd be glad to answer any questions.

SENATOR MINES: Thank you. Questions for Mr. Jenkins? I'm sorry, Senator Louden.

SENATOR LOUDEN: I guess, Tom, that's Blue Cross and Blue Shield when they were still light blue, I think. This is what I was alluding to with your different premiums. You have premiums for single and single females, single male, and you can buy premiums on individual children, actually, and your premiums could be at a different price than if you bought family ones. And, of course, and I knew that even if you have the policies like you mentioned there, that baby is actually insured from birth on. That's correct.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 30

LB 864

TOM JENKINS: Yes.

SENATOR LOUDEN: I mean, we do have some of this. Now, what I'm wondering about is when they come up with the idea that, or I guess as Senator Jensen said something about, when you change jobs, does your insurance company handle something like that? Because you do have a way of carrying that insurance forward into the next job for a period of time, don't you?

TOM JENKINS: Yes.

SENATOR LOUDEN: I mean, just because you're working at one job and change to another job and you change insurance policies doesn't mean you've lost your entire coverage and have to start over again. Is that...?

TOM JENKINS: Right. And I actually heard, that may be Senator Howard's main concern and I have empathy. That is an area that has become sort of second nature to me and people in the benefits business, but it's kind of complicated...it's really quite complicated how that works. First of all, it started with the federal law back in '96 with HI and, again, that does apply to insured and self-insured groups. So there are not big populations out here. In the employment population, the idea is I only have to meet the pre-ex once so I move along from group to group. I carry that portability. I get something called a certificate, accreditable coverage. I show it to my next carrier and as long as I don't have a break that's longer than 63 days, I'm going to have coverage for that preexisting condition as I move along from employer to employer. Now, when I reached my, let's say last employer or let's say I lose my job and I don't have a new employer. I haven't got a new job yet; it's more than a 63-day break, you've got an outlet in Nebraska, it's the CHIP pool. And you're usually subject to pre-ex in that but you're not in this case. There's a special HIPAA provision in the CHIP law. But, I would say in the federal law, for maternity, those were good questions about, from Senator Flood about why you favor that particular condition more than, you know, a disease which, you know, or another condition. Well, the feds already have. For some reason, this mechanism I talked about of portability isn't even necessary. Pregnancy is not allowed to be treated as a

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 31

LB 864

preexisting condition. You don't even need portability. That's the way the federal law is stated and there's, you know, a long history of that; Pregnancy Nondiscrimination (Discrimination) Act so, first of all, it's not a preexisting condition under employer group policies. I should probably just stop there because it gets more confusing after that (laugh).

SENATOR LOUDEN: Okay, thank you.

TOM JENKINS: But certainly, pregnancy would not be the problem if you've got a new employer.

SENATOR MINES: Any further questions? Thanks, Tom.

TOM JENKINS: Thanks.

SENATOR MINES: Appreciate it. Next testifier is Mr. Galen Ullstrom. Nice to see you.

GALEN ULLSTROM: Thank you, Senator Mines, members of the Banking, Commerce and Insurance Committee. For the record, my name is Galen Ullstrom. That's G-a-l-e-n U-l-l-s-t-r-o-m and I'm senior vice president and a lobbyist for Mutual of Omaha Insurance Company, appearing today in opposition to LB 864. I think Mr. Jenkins kind of gave an explanation of what is already out there in the law and when HIPAA was passed in 1996, the goal of that was to provide for some portability between plans. If somebody was employed, had coverage, moved to another employer, it was to prevent job lock and, therefore, it put limitations on a preexisting condition. In general it put a limitation, so you can impose a preexisting condition for virtually anything except if they haven't exhausted their pre-ex under their original plan. Then it could be continued a little bit. But there's a specific provision in it that like we have in Nebraska law that says, exclusion not applicable to pregnancy. A group health plan, health insurance issuer offering group health coverage may not impose any preexisting condition exclusion relating to pregnancy as a preexisting condition. So, if you had prior coverage, you go to coverage, there cannot be a preexisting condition for pregnancy. The concern, as Tom mentioned, is someone who stays out of the system for some reason, doesn't elect coverage, and then elects coverage when they are already pregnant. And in that case, or

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 32

LB 864

elects, as Senator Loudon mentioned, they've got single coverage because it's only themselves and their spouse, and then elect family coverage which has maternity coverage in it, and then they do that after they're already pregnant. And that's the thing we're trying to exclude. I want to bring up one other thing just in the technical aspects of the bill. The concern I have is that it is not limited to the type of plans it applies to. It applies to individual group sickness and accident coverage, and then it exempts specifically specified disease or other limited benefit coverage. In HIPAA, when it was directly related or trying to get remedy medical expense coverages, it had a list of accepted benefits, applying accident only, for example, disability income, a number of other...long-term care, a number of other plans that I think should be excluded if this is attempting to get at major medical anyway. And the reason I bring that up is specifically disability income. Disability income coverage is coverage that is not specifically covered by HIPAA, but it does have a preexisting condition. Normally, you are not covered for disabilities where you've received treatment within either three or six months prior to taking out the policy and that extends for 12 months. And in our products, maternity, pregnancy is specifically considered a preexisting condition. That has a significant impact on the rates. And our short-term disability policies, maternity-type claims, make the second largest of any claim and that's whether someone goes on bedrest, they have a complication, so it's in excess of 20 percent of all claims are for that reason. And that's in a situation where it's not excluded for pre-ex. Those are the ones we pay. If somebody could stay out of the product, not buy the product, until they were pregnant, the exposure would go up significantly and, clearly, I don't think anybody would buy it if they didn't have to. It would certainly cut back on the premiums we're getting in so, frankly, it would have a fairly significant rate impact on the DI side. So I wanted to bring that up that I think the definition is broad, but I think if Senator Howard is concerned about people moving from job to job, federal law did control that and, again, as Tom mentioned, that applies to both ERISA and non-ERISA plans, both insured and self-insured plans. So the federal law does get at those issues where state law would not.

SENATOR MINES: Great. Thanks, Galen. Questions for

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 33

LB 864

Mr. Ullstrom? Seeing none, thanks for your testimony.  
Bill, you're next.

BILL PETERS: Mr. Chairman, members of the committee, I am Bill Peters, representing Golden Rule Insurance. We are in the business of writing individual insurance. It's always nice to follow the two experts on the insurance industry. I'm only here basically to say me, too, but bring up an additional point. There's several points, I suppose. First, an insurance company cannot stay in business paying out more benefits than it takes in in premium and other income. And this provision would clearly allow and require us to pay out more benefits than we received in income. There's two solutions to that which I don't think is good public policy. The first is for the company to withdraw from the business, selling. But there's probably an intermediate first step, and that's to quit selling pregnancy coverage, maternity coverage. And that would also solve the problem, but that would not be good insurance policy and would not be good for the citizens of the state. So, since...it simply boils down to that we'd like to receive a premium for 270 days before we pay certain claims.

SENATOR MINES: Okay, thank you. Questions? Thanks for your testimony, Bill.

BILL PETERS: Thank you.

SENATOR MINES: I see one last testifier...oh, we have another testifier following. Dave, you're up.

DAVID MCBRIDE: Almost finished (laugh).

SENATOR MINES: No, you're doing great.

DAVID MCBRIDE: Chairman Mines, members of the committee, my name is Dave McBride, M-c-B-r-i-d-e, representing the Nebraska Association of Insurance and Financial Advisors. We are here in opposition to the bill and I won't be redundant. You've heard from the companies already, explain most of the rationale which is the basis for our opposition. I simply want to indicate that from the standpoint of our members who are the agents who are selling these policies across the state, our concern, very simply, is that although we acknowledge there are certainly some people who could

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 34

LB 864, 878

benefit from what Senator Howard is trying to do with this bill, there is concern that there are far more people who would be disadvantaged by either reduced availability of coverages or increased costs. So, basically, we're just here to echo prior sentiments.

SENATOR MINES: And I hear, so far, it's all about availability and costs. Okay.

DAVID MCBRIDE: Yes.

SENATOR MINES: Okay, questions for Mr. McBride? Thanks, Dave, appreciate your testimony. Any others testifying in opposition following Ms. McKenzie? Jan.

JANIS MCKENZIE: (Exhibit 4) Senator Mines, members of the committee, I'm Jan McKenzie, M-c-K-e-n-z-i-e, representing the other 24 members of the Nebraska Insurance Federation who you did not hear from today, who are also in opposition to the bill. I also offered to present this letter from the state chamber for you in opposition as well. That's all.

SENATOR MINES: Duly noted. We'll receive that. Are there questions for Ms. McKenzie? Seeing none, thanks for your testimony. Anyone else wishing to testify in opposition? Anyone wishing to testify in a neutral capacity? Seeing none, we only allow the senator to close so thank you for being here and that will end public hearing on (LB) 864 and I'll open the public hearing on (LB) 878 exactly on cue.

LB 878

SENATOR SCHIMEK: (Exhibits 1, 2) Must mean you have a good communication system, Mr. Chairman.

SENATOR MINES: Yes, and welcome to our committee.

SENATOR SCHIMEK: Thank you. I'm so pleased to be here. I think...I was thinking it was probably 1998 was about the last time I appeared before this committee.

SENATOR MINES: Oh, my.

SENATOR SCHIMEK: I'm not positive about that.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 35

LB 878

SENATOR MINES: Well, we'll make this one memorable, you won't forget us.

SENATOR SCHIMEK: (Laugh) I'll bet you will. So, good afternoon, Mr. Chairman and members of the Banking, Commerce and Insurance Committee. For the record, my name is DiAnna Schimek. I represent the 27th Legislative District, the "historic" district. LB 878 is intended to help solve a complex issue that was brought to my attention by a constituent of mine who was supposed to testify today, but has unexpectedly had to go out of town to a funeral and he apologizes for not being here. As you know, this bill amends section 44-784, for the childhood immunization mandate. The law exists because the Legislature recognized the importance of childhood immunization. With the passage of the law, the effort to vaccinate children became a priority for the state of Nebraska. This mandate does not reach ERISA plans, of course, but one thing that was apparently overlooked in the whole discussion was whether or not the children of parents who were issued so-called certificates would enjoy the same immunization benefits that others would. My constituent and his wife sought childhood immunizations for their child, but my constituent was notified by the certificate provider who was situated (phonetic) in Indiana that his child's coverage was, in fact, not mandated by Nebraska law. After a lengthy investigation by the Department of Insurance, it was found that the constituent's certificate was, in fact, not subject to (section) 44-784 and that the group in Indiana had not violated Nebraska law. My constituent, however, felt cheated. He believed, as most people would, that immunizations were a mandated benefit no matter what the terminology. But if one looks at the statute in question, terms such as certificate and subscriber contract are not specifically defined. I realize that insurance law is constructed with sophisticated terms of art, but I believe that the Legislature would have made sure that the statute included the term, certificate, had it known that it was possible for parents with plans that were not ERISA to fall through the cracks. It should be noted in certain situations, it is completely possible that the employer that purchases insurance may not have any understanding of the regulatory laws of Indiana, or other states, nor other conflicts of law that arise in situations such as this.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 36

LB 878

Even more disturbing is that the consumer who naturally believes he or she is entitled to all the benefits of the mandate in (section) 44-784 is, in fact, not entitled. This issue poses another disturbing possibility that companies can use trust to avoid mandated benefits thereby skirting state regulations. While the state in which these certificates were formed may have some regulatory functions over the trust, it appears that form shopping could be a prime consideration for the situs of these trusts. The Department of Insurance recommended that if we were to introduce a bill, that it be done in a manner in which LB 878 is drafted. The department had indicated that this could be a problem for a small sliver of consumers who fall into the cracks between federal and state law. They do not know how many consumers within the state are affected the same way my constituent, Mr. Haller, is. And I would like to submit the letter that Mr. Haller wrote to the committee...

SENATOR MINES: Great.

SENATOR SCHIMEK: ...and I don't know, since he's not going to be here, would it be proper if I would just simply read this into the record?

SENATOR MINES: I think we can read it.

SENATOR SCHIMEK: I don't know that there's going to be anybody else testifying here today.

SENATOR MINES: Yeah, go ahead, unless it's 25 pages (laugh).

SENATOR SCHIMEK: No, no (laugh), it won't take too long.

SENATOR MINES: Okay.

SENATOR SCHIMEK: Dear Senator Mines, after three years of struggle, I looked forward to personally testifying in regards to my experience with Benicorp Insurance Company, Benicorp, the Nebraska Department of Insurance, and Senator Schimek's office regarding statute 44-784, and how it is applied, blah, blah, blah. He goes on in the second paragraph, I contacted my insurance agent at Daubert and Butler Associates here in Lincoln as well as Benicorp itself,



Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 37

LB 878

on multiple occasions prior to my child's birth and was assured each time that my child's immunizations could be covered under my policy. My agent further assured me that Benicorp had to cover them as per Nebraska state law. This ended up not being the case at all. Benicorp treats immunizations under the wellness benefit which is capped at \$200 per year. My child's first year's worth of immunizations were \$1,341. I appealed the denial of my benefits to Benicorp, but they stuck to the argument that Benicorp did not have to follow Nebraska law because my policy was not issued in Nebraska but rather was a certificate, et cetera. After my appeal to Benicorp was denied, I sent a letter to the DOI requesting them to force Benicorp to comply with the laws of Nebraska and cover my child's medical expenses. It took about ten months for the DOI to determine that Benicorp had, indeed, followed the letter of the law, though not the intent of the law, and, therefore, they could do nothing more for me. Prior to that final determination from DOI, Benicorp changed its policy on childhood immunizations to be covered as the Nebraska statute mandates. They must have known their loophole was now closed. However, when the final determination came from the DOI, Benicorp immediately reversed that change and went back to their prior noncompliance of the statute. Nebraska Revised Statute 44-784 was enacted to help ensure that the children of Nebraska receive their necessary childhood immunizations. The intent seems clear to a layperson, but the legal counsel at DOI feels that since the Legislature did not include the word "certificate" we cannot assume that their intent was to have "certificate" be included in the statute. And he apologizes for not being here, but wants to make himself available in the future, if needed. I do have a suggested amendment and it is on page 2 of the green copy. And on line 20 through 24 if you'll notice, this language covers the types of immunizations that are covered. The suggested amendment is that the childhood immunization would include immunizations according to the 2006 recommended childhood and adolescent immunization schedule of the United States, approved by the Advisory Committee on Immunization Practices. And that's mainly because this list can change from time to time and to have a laundry list in the statute doesn't seem to be, maybe the best way to handle this. So, thank you very much for allowing me to be here today.

SENATOR MINES: Thank you, Senator. Are there questions for

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
January 30, 2006  
Page 38

LB 878

Senator Schimek? Don't let her off this easy. I see no questions.

SENATOR SCHIMEK: Thank you.

SENATOR MINES: Thanks so much.

SENATOR SCHIMEK: You're welcome.

SENATOR MINES: Could I see a show of hands of those wishing to testify in support of the bill? How about those wishing to testify in opposition? I see none as well. Those wishing to testify in a neutral capacity? I see none. Senator Schimek waives closing and that will end the public hearing for LB 878 and will end our hearings for the day. Thank you for being here.